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Shinhان USA, Inc., and C2F Inc.

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

**TOO MARKER PRODUCTS, INC., a  
Japanese corporation, and  
IMAGINATION INTERNATIONAL,  
INC., an Oregon corporation,**

Civil Case No. 09-1013-PK

**DECLARATION OF BILL COLE IN  
SUPPORT OF DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Plaintiffs,

v.

**TRADEMARK CASE**

**SHINHAN ART MATERIALS, INC., a  
Korean corporation, SHINHAN USA,  
C2F, INC., an Oregon corporation, and  
BONGKEUN HAN, an individual,**

Defendants.

I, Bill Cole, hereby declare under penalty of perjury:

1. I am the President and CEO of Bill Cole Enterprises, Inc., a Massachusetts corporation, ("BCE") located at 49 Teed Drive, Randolph, MA 02368. I am personally knowledgeable regarding the subject matter stated herein and make this declaration in support of Defendant's Motion for Summary Judgment.

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SUMMARY JUDGEMENT

2. BCE was established in 1973 and in selling preservation supplies for collectibles and art supplies used for comic book art such as professional art markers.

3. BCE carries an array of professional art markers used for comic art, including both COPIC and TOUCH. BCE is a retailer whose sales are made online and at tradeshows and conventions.

4. BCE has carried the COPIC product line for approximately 4 years. BCE also began carrying the TOUCH Art Marker in 2009 when it became aware of the high quality and value of SHINHAN art materials including the TOUCH Art Marker. In addition, in 2008, I began having difficulty obtaining COPIC markers from Too Marker's distributor in the United States.

5. I evaluate the quality of all of the products BCE carries, which involves becoming familiar with product features, and often using the products myself. My employees and I have both used and carefully evaluated the various useful features of COPIC markers and their overall quality in the course of deciding to carry them.

6. COPIC and TOUCH markers have squarish marker body profiles, which prevents them from rolling off of angled drawing surfaces. COPIC has advertised this functional feature in information it has sent to me and I have also seen it noted on the website of their distributor, Imagination International, Inc. Speaking from experience, when a user puts a square body marker down on a drawing surface, it stays put, and is therefore more convenient to use. COPIC marker bodies and marker caps share this squarish profile, and for that reason the caps do not roll off of angled drawing surfaces either. While users can store a cap on end of the opposite cap, because the caps are square a user may elect instead to put the cap down on the drawing surface without the cap rolling away. A marker cap which rolls off can be lost, and a marker will dry out and will need to be replaced if its cap is lost. The squarish profile of the marker body and the cap is an important feature which contributes significantly to the usefulness and therefore the quality of a COPIC marker.

7. COPIC and TOUCH markers have a fine nib on one end and a broad nib on the other end. When the caps are in place on the ends of the markers, covering the nibs, a user cannot see which nib is fine and which is broad. Graphics on one side of the marker tell a user which nib is broad and which is fine. This is a good functional feature, but those graphics are only visible if the user is looking at the one side of the marker on which they are located. In

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addition, the graphics are small, and can be obscured by paint or ink. Therefore, markers such as COPIC markers and TOUCH markers have a small but noticeable gap between the cap and the body of the marker which exposes the plastic insert which encases the nib. The plastic insert incasing the fine nib is dark, and the insert encasing the broad nib is the same color as the marker body. This means that a small contrasting band of dark plastic is visible on all sides of the marker, and it tells a user which nib is the fine nib. Because this color band is recessed and extends around the entire marker, it is less likely to become obscured by paint or ink. Without this band, a user would have to either look for a graphic by picking up the marker and turning it to the side bearing the graphic, if necessary, or pull caps off the marker to look for the correct nib. Both of these options are inconvenient, especially in view of the fact that every time a user picks up a COPIC marker to use it, the user must determine which end he or she wants to use. The gap which creates a color band is an important feature, and it contributes significantly to the usefulness and therefore quality of a COPIC marker.

8. COPIC markers contain plastic inserts in each cap designating the color of the marker. The inserts are indented relative to the caps, which makes it possible to store one cap on the end of the other, if a user chooses to do so. The inserts protrude from the ends of the caps, and therefore one or both plastic inserts are visible from every angle, which means that a user can quickly and easily identify the color he or she is looking for. These inserts are an obvious and effective way of designating the color at a reasonable cost. The plastic inserts have enough surface area that they cannot be easily obscured with paint or ink. Unlike stickers, they cannot be rubbed off or wear off with use. These plastic inserts also contribute to the usefulness and therefore quality of a COPIC marker.

9. Professional art markers may have features which affect to the quality of the particular marker. In my experience, a feature that affects a marker's roll resistance, such as the square body of the COPIC markers, that enhances a user's ability to differentiate between multiple nibs, such as the contrasting color band of the COPIC markers, or that allows for temporary cap storage, such as the indented end caps of the COPIC markers affects the quality of that marker.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated: December 23, 2009

  
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William M. Cole, P.E.  
President

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